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CHESAPEAKE & O. RY. CO. *v.* HOFFMAN.

Jan. 14, 1909.

[63 S. E. 432.]

1. Pleading (§ 48*)—Declaration.—It is enough that a declaration is sufficient to apprise defendant of the ground of complaint, and states sufficient facts to enable the court to say on demurrer that plaintiff is entitled to recover if the facts stated are proved.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 105, 106; Dec. Dig. § 48.*]

2. Master and Servant (§ 264*)—Injury to Servant—Pleading and Proof.—The declaration showing that the work in which plaintiff was engaged when injured was on a pier, a part of defendant's railway track, that the work involved demolition and construction, the taking out of decayed or insufficient parts, and the substitution of sound and sufficient timbers, the detail of the method of work employed may be proved, though not specifically pleaded; the object of the declaration being merely to give defendant such reasonable information of the ground of the complainant as to enable it to fairly present its grounds of defense.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 861-876; Dec. Dig. § 264.*]

3. Evidence (§ 477*)—Opinion Evidence.—Plaintiff may testify whether since receiving his injury he is capable of doing such work as he has done theretofore.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2239; Dec. Dig. § 477.*]

4. Trial (§ 110*)—Remarks of Counsel.—For counsel, after objection to his question has been overruled, to state that he would withdraw the question, that he would rather do so than give any show of an appeal, is harmless.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 271; Dec. Dig. § 110.*]

5. Appeal and Error (§ 1050*)—Harmless Error—Admission of Evidence.—Any error in allowing a witness for plaintiff, in an action for injury to one working in renovating a railroad pier, to testify as to the usual life of timber exposed as that was, is harmless; the evidence showing that the timber in the pier was at the time of the accident in large part utterly rotten and worthless.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1050.*]

6. Damages (§ 216*)—Instructions—Personal Injuries.—The instruction that, in estimating plaintiff's damages, the jury may consider

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

his physical and mental suffering from his injuries, his loss of wages for the time he was prevented by the injuries from following such business as he could have followed but for the injuries, and that the amount of damages should be reasonable and just to both parties, and should compensate plaintiff for loss of money he would probably earn but for the injuries, is sufficient.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 548-555; Dec. Dig. 216.*]

7. Damages (§ 132*)—Personal Injury—Excessive Verdict.—Where one fell more than 30 feet and was rendered unconscious, his arm was mashed, his head hurt, his shoulder blade dislocated, his ankle badly sprained, and at the time of the trial he had not recovered from the injuries, a verdict of \$2,500 was not excessive.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 178, 372-385; Dec. Dig. § 132.*]

8. Master and Servant (§ 180*)—Negligence of Fellow Servants—Railroads.—The preliminary work of removing rotten timber from a pier, forming part of the roadbed of a railroad, in the course of restoring it, is within Const. 1902, § 162 (Code 1904, p. cclix), abolishing the fellow-servant doctrine as to every employee of a railroad company engaged in the physical construction, repair, or maintenance of its roadbed, or any structure connected therewith.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 363-365; Dec. Dig. § 180.*]

9. Constitutional Law (§ 245*)—Equal Protection of Law—Employment of Labor—Liability for Injuries.—Const. 1902, § 162 (Code 1904, p. cclix), abolishing the fellow-servant doctrine as to employees of railroad companies engaged in construction or repair of its roadway, or in work on a car, locomotive, or train, does not deny the equal protection of the law.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 702; Dec. Dig. § 245.*]

10. Master and Servant (§ 229*)—Contributory Negligence.—Negligence of an employee amounting to want of ordinary care, which is the proximate cause of his injury, prevents recovery of the master.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 674; Dec. Dig. § 229.*]

11. Master and Servant (§ 107*)—Safe Place to Work.—The doctrine requiring the master to furnish the employee a safe place to work does not apply where the servant is employed in repairing an unsafe structure, involving the tearing down of part of it.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 199-202; Dec. Dig. § 107.*]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

12. Master and Servant (§ 286*)—Injury to Servant—Negligence—Evidence.—Evidence in an action for injuring a servant while engaged in taking down defective parts of a pier forming part of a railroad for purposes of repair held sufficient to go to the jury on the question of negligence.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 286.*]

13. Master and Servant (§ 286*)—Injury to Servant—Contributory Negligence—Evidence.—The question of contributory negligence, as well as of negligence, where the servant in repairing a pier in a railroad was injured, is for the jury; the evidence being such that reasonable men might well differ thereon.

[Ed. Note.—For other cases, see Master and Servant, Dec. Dig. § 286.*]

NEWPORT NEWS & OLD POINT RY. & ELECTRIC CO. *v.*
NICOLOPOOLOS.

Jan. 14, 1909.

[63 S. E. 443.]

1. Street Railroads (§ 28*)—Operation—Rights in Streets—Rights of Public.—A street railway company operating on a public highway has no property interest in the highway, but the mere right to use it in common with the public, and its rights in the use of the road are not superior to those of the public therein.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 39; Dec. Dig. § 28.*]

2. Street Railroads (§ 90*)—Operation—Speed of Cars.—Unless expressly permitted, the speed of a street car should be no greater than is reasonable and consistent with the customary use of the highway with safety.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. § 191; Dec. Dig. § 90.*]

3. Street Railroads (§ 90*)—Operation—Lookouts.—It is the duty of a motorman operating a street car on a public highway to keep a lookout for persons or vehicles on the highway.

[Note.—For other cases, see Street Railroads, Cent. Dig. § 191; Dec. Dig. § 90.*]

4. Action on the Case (§ 4*)—Pleading.—In an action for injuries caused by being struck by a street car, a general allegation that the defendant negligently ran its car into plaintiff's wagon while he was attempting to cross its track was insufficient as a count in trespass on the case, where there was no averment showing in what particular the defendant failed to perform its duty.

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.